UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF TEXAS
EDDIE JAMES ROBERSON,	
Plaintiff,	8 8 8
versus	§ CIVIL ACTION NO. 1:05-CV-837
TED BLANCHARD, et al.,	8 8 8
Defendants.	§ §

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Eddie James Roberson, an inmate confined at the Jefferson County Correctional Facility, proceeding *pro se*, brought this civil rights suit pursuant to 42 U.S.C. § 1983 against Ted Blanchard and Todd Lambardino.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes plaintiff's objections are without merit.

Plaintiff filed objections to the Report, asserting that his life was in danger during Hurricane Rita in September 2005. However, the inquiry concerning the prisoner's danger is to be made at the time of the motion to proceed *in forma pauperis*. *See Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998). Plaintiff has failed to allege or demonstrate that his life was in danger at the time he filed the complaint in December 2005. Accordingly, plaintiff is not allowed to

proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g) due to having had more than three prior actions dismissed as frivolous.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED at Beaumont, Texas, this 7th day of June, 2006.

Marcia A. Crone

MARCIA A. CRONE

UNITED STATES DISTRICT JUDGE